

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN ANDREW KISTER, #264 274,)
)
Plaintiff,)
)
v.) CASE NO. 2:20-CV-870-ECM-SMD
) [WO]
WARDEN WANDA LIGHTNER, et al.,)
)
Defendants.)

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION

Proceeding *pro se* Plaintiff John Kister [“Kister”] filed this 42 U.S.C. § 1983 action while incarcerated at the Bullock Correctional Facility in the Residential Treatment Unit (“RTU”) of the facility. Kister files suit against Wardens Wanda Lightner and Patrice Jones challenging a denial of adequate recreational time for RTU inmates. For relief, Kister seeks injunctive relief. Specifically, Kister requests prison officials at Bullock be ordered to provide RTU inmates with at least ten hours each week of yard and gym time in two hour increments. Doc. 1; *see also* Doc. 32.

Kister filed this action while incarcerated at the Bullock Correctional Facility in Union Springs, Alabama. Since filing this action Kister has been transferred to another institution operated by the Alabama Department of Corrections. Doc. 40. Based on Kister’s Complaint and the specific relief sought, the undersigned concludes this action is due to be dismissed as moot.

II. DISCUSSION

Courts do not sit to render advisory opinions. *North Carolina v. Rice*, 404 U. S. 244, 246 (1971). An actual controversy must exist when the case is pending. *Steffel v. Thompson*, 415 U. S. 452, 459 n.10 (1974). Where the only relief requested is injunctive, it is possible for events subsequent to filing the complaint to make the matter moot. *National Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 350 (D.C. Cir. 1997) (change in statute); *Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991) (transfer of prisoner); *Tawwab v. Metz*, 554 F.2d 22, 23 (2d Cir. 1977) (change in policy).

A claim becomes moot when the controversy between the parties is no longer alive because one party has no further concern in the outcome. *Weinstein v. Bradford*, 423 U.S. 147 (1975); *Flast v. Cohen*, 392 U.S. 83, 95 (1968) (finding “no justiciable controversy is presented . . . when the question sought to be adjudicated has been mooted by developments” subsequent to filing of the complaint.). Article III of the United States Constitution confers jurisdiction on the district courts to hear and determine “cases” or “controversies.” U.S. Const. Art. III, 2; *Mingkid v. U.S. Att'y Gen.*, 468 F.3d 763, 768 (11th Cir. 2006) (citation omitted) (explaining that “Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of ‘Cases’ and ‘Controversies.’”). Federal courts may not rule upon questions hypothetical in nature or which do not affect the rights of the parties. *Lewis v. Continental Bank Corp.*, 494 US. 472, 477 (1990). “Article III requires that a plaintiff’s claim be live not just when he first brings suit, but throughout the litigation.” *Tucker v. Phyfer*, 819 F.2d 1030, 1034 (11th Cir. 1987). Because mootness is jurisdictional, dismissal is required when an action is moot, as a decision in a

moot action would be an impermissible advisory opinion. *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001).

In *Saladin v. Milledgeville*, 812 F.2d 687, 693 (11th Cir. 1987) (citations omitted), the Eleventh Circuit Court of Appeals determined “[a] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome of the litigation, such as where there is no reasonable expectation that the violation will occur again or where interim relief or events have eradicated the effects of the alleged violation.” See also *Darring v. Kincheloe*, 783 F.2d 874, 876 (9th Cir. 1986) (explaining that after an inmate is transferred, there is neither a “reasonable expectation” nor a “demonstrated probability” that the inmate will return to the prison against which he sought injunctive relief and therefore claim for injunctive relief is moot). “This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate . . . [I]t is not enough that a dispute was very much alive when the suit was filed.” *Lewis*, 494 U.S. at 477.

“Equitable relief is a prospective remedy, intended to prevent future injuries.” *Adler v. Duval County School Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997). For that reason, “[w]hen the threat of future harm dissipates, the plaintiff’s claims for equitable relief become moot because the plaintiff no longer needs protection from future injury.” *Id.*; *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (citation omitted) (holding that “[l]ogically, ‘a prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past.’”). In the context of a § 1983 action filed by a prisoner, such as this, a prayer for declaratory or injunctive relief becomes moot upon the

transfer or release of that prisoner from the facility where his cause of action arose. *See, e.g., Wahl v. McIver*, 773 F.2d 1169, 1173 (11th Cir. 1985) (holding that “an inmate’s claim for injunctive and declaratory relief in a section 1983 action fails to present a case or controversy once the inmate has been transferred.”).

Kister is no longer an inmate at the Bullock Correctional Facility, having been transferred to another correctional institution during the pendency of this action. He is therefore no longer subject to the conditions about which he complained when he filed this case. There is no indication Kister will be returned to Bullock much less be returned in the immediate future. “Past exposure to illegal conduct does not in itself show a pending case or controversy regarding injunctive relief if unaccompanied by any continuing, present injury or real and immediate threat of repeated injury.” *Cotterall v. Paul*, 755 F.2d 777, 780 (11th Cir. 1985) (quotation marks and citation omitted). Absent is any showing of a “continuing, present injury or real and immediate threat of repeated injury” to Kister. *See Id.* (observing that a transfer of the plaintiff back to the county jail if he was again incarcerated at a minimum security facility and charged with a disciplinary infraction was too speculative to satisfy the required injury element).

In light of the foregoing, the undersigned finds Kister’s Complaint is now moot. Because there is no present case or controversy to support the Court’s jurisdiction over this action, it is due to be dismissed without prejudice for lack of jurisdiction.¹

¹ In the event Kister is returned to the institution about which he complained, a dismissal without prejudice allows him to re-file his claims. *See Wahl*, 773 F.2d at 1174.

III. CONCLUSION

Accordingly, the undersigned Magistrate Judge RECOMMENDS that:

1. Plaintiff's Complaint be DISMISSED without prejudice for lack of jurisdiction.
2. No costs be taxed.

It is ORDERED that **by March 31, 2022**, the parties may file objections to this Recommendation. The parties must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made. Frivolous, conclusive, or general objections will not be considered by the Court. This Recommendation is not a final order and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in accordance with 28 U.S.C. § 636(b)(1) will bar a party from a de novo determination by the District Court of legal and factual issues covered in the Recommendation and waive the right of the party to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11TH Cir. R. 3–1. See *Stein v. Reynolds Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); see also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

DONE this 17th day of March, 2022.

/s/ Stephen M. Doyle
STEPHEN M. DOYLE
CHIEF UNITED STATES MAGISTRATE JUDGE